

FORM NO. 21

(See rule 114)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ~~lack 2442~~ BENCH

OA/TA/RA/CP/MA/PT of 20.....

..... *(Chingar Chandra)* Applicant(S)

Versus

..... *L.C.F. Govt.* Respondent(S)

INDEX SHEET

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Certified that the file is complete in all respects.

*R/C. Accts. Deptt. - Paribhog**26/8/12*

Signature of S.O.

Raj

Signature of Deal. Hand

26/11/90
JL
26/11

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

Registration No. 386 of 1989 40 (2)

04/12
26/11

APPLICANT(s) Sukh Chandra Chatterjee & others

RESPONDENT(s) C.C.I & others

	<u>Particulars to be examined</u>	<u>Endorsement as to result of examination</u>
1.	Is the appeal competent ?	yes
2.	a) Is the application in the prescribed form ?	yes
	b) Is the application in paper book form ?	yes
	c) Have six complete sets of the application been filed ?	yes
3.	a) Is the appeal in time ?	yes
	b) If not, by how many days it is beyond time ?	yes
	c) Has sufficient cause for not making the application in time, been filed ?	yes
4.	Has the document of authorisation/ Vakalatnama been filed ?	yes
5.	Is the application accompanied by B.D./Postal Order for Rs.50/-	yes
6.	Has the certified copy/copies of the order(s) against which the application is made been filed ?	yes
7.	a) Have the copies of the documents/relied upon by the applicant and mentioned in the application, been filed ?	yes
	b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly ?	yes
	c) Are the documents referred to in (a) above neatly typed in double space ?	yes
8.	Has the index of documents been filed and paging done properly ?	yes
9.	Have the chronological details of representation made and the outcome of such representation been indicated in the application ?	yes
10.	Is the matter raised in the application pending before any court of Law or any other Bench of Tribunal ?	yes

yes

Questions to be ExaminedEndorsement as to result of examination

1. Is the application/duplicate copy/price copies signed ? (P)
 2. Are 20 copies of the application and documents filed ? yes

3. Is it identical with the Original ? yes

4. Is the application dated ? X

5. Is the filing fee, signatures and price correct ? yes

6. Are the file size envelopes containing full address of the plaint/defendants been filed ? A.A.

7. Is the plaint address the plaint and addresses ? yes

8. Is the names of the parties written in the copies tally with the names indicated in the application ? yes

9. Are the translations certified to be true or supported by an affidavit affirming that they are true ? yes

10. Are the facts of the case mentioned in item no. 6 of the application ? yes

a) Concise ? Very very
 b) Under signature reads ? yes
 c) Numbered consecutively ? yes
 d) Typed in double space on one side of the paper ? yes

11. Have the particulars for interim relief prayed for indicated with reasons ? yes

12. Whether all the remedies have been exhausted. yes

Date 25/11/11

Exhibit
5.R.

Put up before the Hon. Bench

on 27/11/11 for orders.

27/11/2011

Ques
 26/11

SSC 7/1/91
Hon. Mr. Justice K. Nath V.C
Hon. Mr. M. M. Singh, A.M.

Put up tomorrow for permission.

On 28.11.90.

M. M. J.
A.M.

Q
V.C.

28.11.1990 Hon'ble Mr. Justice K. Nath, V.C.
Hon'ble Mr. M.M. Singh, A.M.

Admit.

Issue notice to respondents
to file a counter within four weeks
to which the applicant may file a
rejoinder within two weeks thereafter.
List for final hearing on 09.01.1991.

Sd/-
A.M.

Sd/-
V.C.

Notices issued
8
(6.12.90)

OR

- Notices were issued
on 6.12.90.

Neither reply nor
any unsworn resp on
has been return back

S - F 4

L
7/1/91

91.91
D.R.

3/1
Courtier

Mr. D.P. Srivastav for
the applicant has made
appearance on behalf
of the applicant's side
O.P. is absent and he
did not file counter
till today He is ordered
to file c.s by 31.1.91

O.A. 336/90(L)

10.4.91
D.R.

Both the parties are

absent today. No

appearance has been

made on behalf of

the respondent.

Sufficient opportunity

has also been granted

to O.P. But counter

has not been filed.

so far. Case is listed

on 24.5.91

24.5.91
D.R.

Both the parties are

absent today. Counter

has not been filed till

today. Respondent to

- file counter by 24/7/91

24.7.91
D.R.

Applicant's side is

present. O.P. is absent.

Counter has not been

filed till today. List

the case for filing counter

on or before 21/7/91

22.5.92

D.R.

✓

Counsel for Applicant

is present. No counter
has been filed till
today. Respondent

to file counter by

on 17/7/92

AIC 5
22/5/92
SC17.7.92
D.R.Counsel for the
Applicant is presentNo appear for the
Respondent. Respondent
to file counter by

15/9/92

15.9.92
D.R.Applicant's side is present.
Counter has not been filed.
Let it be filed by

17/11/92.

✓

Central Administrative Tribunal
Lucknow Bench, Lucknow.

.....
ORDER SHEET

Date / Office Report / Ganguly D.A./T.A. No. 386/1
Order

24/2/83

retd. 1/2/83
retd. 1/2/83

24/2/83. The matter is referred to the
panel to decide upon

the following issues
first for consideration
to file a statement which
may be filed within one
week thereafter to
be done on 12-3-83

JK
17-2-83

JK
17-2-83

JK
17-2-83

NISH/-

M.R.
D.A. No. 1037/82
In 386/82
Dated : 12.3.93

Hon'ble Mr. Justice U.C.Srivastava, V.C.
Hon'ble Mr. K. Obayya, A.M.

Admit. Issue notice. C.A. may be filed within 4 weeks and R.A., if any, may be filed within 2 weeks list thereafter. List this case on 28/4/93 before DR(J) for completion of pleadings.

A.M.

(g.s.)

V.C.

28/4/93
D.R.

Both the Counsel for the applicant is not present. Respondents are not present. No counter affidavit filed. The same may be filed on the date fixed. Last chance before me on 26/5/93.

26/5/93

Both the parties are absent. C.A. has not been filed. Respondent's are directed to file it by 22/7/93.

A.M.

27/10/93
C.A.

✓

Both the parties are present. Counter has been filed. R.A. if any may be filed on the date fixed. List this case for R.A. before D.R. on 13/10/93

on

✓

13/10/93

D.R.

Both the ~~parties~~ ⁰⁸ parties are not present. C.A. filed but R.A. has not been filed yet. Applicant is directed to file it by 20/11/93.

~~C.A.~~~~✓~~

20.11.93

D.R.

Both the parties are present. Counter has been filed. R.A. if any may be filed on the date fixed. List this case for R.A. before me.

✓

17/11/94
D.R.

Shri. P. P. Sivaram is present. C.A. filed. Applicant to file R.A. on the date fixed List on 1/12/94 before me.

✓

~~✓~~

P.P.

C.A. No 386/1904

21/4/94.
D.R.

Both the parties are present.

C.A. filed. R.A. has not been filed. Applicant is directed to file it by 20/6/94 before me..

(✓)

Amrit

D.R.

or
Not filed
Subm. Not P
the said
before (C)
16.6.94

20/6/94
D.R.

Parties are not present.
C.A. filed but R.A. has not been filed. Applicant to file it by 24/6/94 before me.

(✓)

Amrit

D.R.

31-1-95

Hon. Mr. Justice B.R. Seksena, V.C. (A)
(C)
Hon. Mr. V.K. Sethi, A.M.

On the adjournment application
of learned counsel (for
the applicant, the case is
adjourned to 1-3-95 for hearing)

28/1/95
S.R.H.

✓ S
A.M.

B.C.
V.C.

1-3-95

Hon. Mr. V.K. Sethi. A.M
Hon. Mr. D.C. Verma 3.M

On the application of Counsel
for adjournment to 10-4-95

L ✓
J.M. D.M.

10-4-95

Hon. Mr. V.K. Sethi. A.M
Hon. Mr. D.C. Verma 3.M

On the application of Counsel for
adjournment to 5-5-95

L ✓
J.M. D.M.

5-5-95

Hon. Mr. V.K. Sethi. A.M
Hon. Mr. D.C. Verma 3.M

On the application of Counsel for
adjournment to 12-5-95

11/11/56

Mr. V.K. Seth, M.L.A.
Mr. K. P. Singh, M.L.A.

Mr. S. N. D. Council for adjustment
of land and irrigation rights, dated 15.3.56

W.E.
A.M.

Rec
V.C.

15.3.56 Hon. Mr. V.K. Seth M.L.A.
Hon. Mr. D.C. Verma, M.L.A.

Name of applicant
Sh. S. S. Kumar, for adjustment
of land and irrigation rights.

Dated 15.3.56.

J.W.
J.M.

V.K.
H.M.

15.3.56 Hon. Mr. Justice B.C. Saksena, M.L.A.
Hon. Mr. V.K. Seth, M.L.A.

Name of applicant, forward
Council for adjustment of land and
irrigation rights.

Dated 15.3.56

A.E.
A.M.

Rec
V.C.

8.7.56

Mr. S. N. D. Council for
adjustment of land and irrigation
rights, dated 8.7.56

Rec'd

26.8.56 Hon. Mr. V.K. Seth A.M.
Hon. Mr. D.C. Verma S.M.

Name of applicant. Name.

Representative S. S. Kumar

Dated 26.8.56 W.E.

A.M.

W.E.

~~24.2.97~~

HC 310923 M. confirmed
(3.10.97) *Ad*
DOC

✓

~~15.11.97~~

HC 310923 M. v. A. S. S. & M.
HC 310923 C. V. W. J. M.

Star S. V. 300 is on hearing
Date 23.5.1998

Ad *J.M.*

L.K.
AN

~~2.12.97~~

HC 310923 M. v. A. S. S. & M.
(2.12.97)

B.R.

24.1.98. Lawyer of Star J. M. V.
work out to 10.3.98

10/3/98

HC. Mr. D. Verma, J.M.
HC Mr. S. Deyal, AM

for S. D. Verma for applicant
S. Verma has ~~some~~ ~~some~~ ~~some~~
adjudication.

Get on 27/4/98 for hearing.

Ad

J.M.

Ad

27-4-98

No sitting of D.B. Case
adj. to 11-8-98.

11-8-98

No sitting of D.B. adj.
to 20-10-98.

B.R.

Ad

~~or
Completed
27/4/98~~

~~or
Completed
27/4/98~~

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:

LUCKNOW BENCH, LUCKNOW.

Original Application No. 386 of 1998.
T.A.R.A./C.C.P.No. of 1998.

Date of Decision: 01.6.99

Ganges Chandra & others....Applicant
Name : Advocate for applicant

Versus

.....D.O.I. & others..... Respondents
.....N.B. Advocate for
Respondents

CORAM

HON'BLE MR. D.C. Veling, JM

HON'BLE MR. A.K. Naseer, JM

1. Whether reporter of local papers may be allowed to see the judgment.
2. To be referred to the reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether to be circulated to other benches ?

Vice Chairman/Member

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH

LUCKNOW

Lucknow this the 1st day of ~~May~~^{June}, 99.

O.A. No. 386/90

HON. MR. D.C.VERMA, MEMBER(J)

HON. MR. A.K. MISRA, MEMBER(A)

1. Ganga Chanra^m, son of Babu lal aged about 36 years, resident of village Shahsadpur, P.O. Rupauo, District Unnao.
2. Ram Kumar, son of Mahabir Prasad, aged about 33 years, resident of village Hastinapur District Unnao.
3. Radhey Lal, son of Bhagwan deen aged about 31 years, resident of Lucknow.
4. Ram Kishore, son of Mahabir aged about 31 years, resident of village Hastinapur P.O. Hasanganj, Lucknow.
5. Ram Lakhan Tewari, son of Shri Motilal Tewari, aged about 31 years, resident of village Behta. P.O. Dewera Klan, Unnao.

Applicants.

None for applicants.

versus

1. Union of India through its General Manaer, N. Railway, baroda Bouse, New Delhi.
2. D.R.M. N. Railway, Hazratganj, Lucknow.
3. Station Superintendent Northern Railway Lucknow.
4. Assistant Personnel officer, Northern Railway, Hazratganj, Lucknow.

Respondents.

None for respondents.

O R D E R

D.C.VERMA, MEMBER(J)

Five applicants of this O.A. have prayed for a direction to the respondents to empanel the applicants and issue orders of appointment and posting against regular group D post treating

A/

the applicants in continuous service right from the month of June, 1988 with all consequential benefits and to pay the entire salary. Further prayer is to quash the order dated 9.8.90 contained in Annexure-1 to the O.A.

2. The brief facts of the case are that the applicants, filed O.A. No. 105/88 before Lucknow Bench of the Tribunal claiming therein that they have been working as Substitute porters. The relief was to allow them to continue to work as Substitute Porters and to restrain the respondents from giving effect to the order dated 25.7.88 by which they were not allowed to continue to work as Substitute Porters.

2. The O.A. was decided by a Division Bench of this Tribunal on 23.4.90 by observing that while the relief claimed by the applicant cannot be granted, the respondents were directed to consider the case of the applicants sympathetically. Thereafter, the respondents considered the case of the applicants and passed the order Annexure 3- dated 9.8.90 which is impugned in the present O.A.

3. In this O.A. again the case of the applicants are that they were initially engaged as substitute porters and they have been working as such but they were wrongly disengaged w.e.f. 25.7.88. The claim is that as the applicants had worked for more than 120 days, continuously, they are under section 25(B) of the Industrial Disputes Act, 1947, entitled to the benefit.

4. The respondents have filed counter reply and have stated that the applicants were initially engaged as casual labour on day today basis and they were duly screened by a Screening Committee on 7.9.90. As the applicants were not found suitable, they were not placed on





the panel of successful candidates.

5. As none appeared on behalf of the parties, we ourselves perused ^{the} pleadings on record and have considered the grounds taken in the O.A. to challenge the order impugned in the case.

6. In the earlier O.A. No.105/88 also the applicants had claimed as Substitute Porters, ~~but~~ The Tribunal, after considering in detail held that "it is clear that though the applicants have been engaged in casual vacancies, they cannot be considered substitute which has a special meaning in terms of railway rules." Thus, a finding has been recorded that the applicants were not substitutes and were only casual workers. The same claim cannot be allowed to be re-agitated in subsequent proceedings.

7. While disposing of the O.A., the Tribunal had merely directed to consideration ~~of the~~ /case of the applicant sympathetically. That has been done by the respondents and rejected by Anneuxre 1 dated 9.8.90. The relief which was claimed in the earlier O.A. (O.A. No. 105/88), cannot be allowed to be re-agitated, as there is a clear cut finding that the applicants were not substitute porters. Besides, as per recitals made in the Counter reply, all the applicants were screened by a duly constituted screening committee on 7.9.90 and screening committee did not find them suitable. This fact has not been specifically denied by the applicant in ~~this~~ Rejoinder Affidavit. Thus, if the applicants were screened and were found not suitable they could not have been empanelled. The relief claimed in the present O.A. cannot be granted.

8. The applicant's claim that there has been artificial break with the purpose of depriving

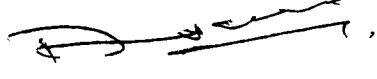


the applicants of their due, is found not substantiated.

9. The order of disengagement was challenged in the earlier O.A. No. 105/88 and the disengagement order was not found invalid, and therefore, continuity of service cannot be claimed w.e.f. the said date. Besides, ~~it~~, admittedly, none of the applicants have been engaged thereafter and therefore, the continuity cannot be granted. The claim of the applicants for empanelment and appointment to a regular Group D post, has therefore, no merit.

10. The O.A. is dismissed. Costs easy.


MEMBER (A)


MEMBER (J)

Lucknow; Dated: 11.6.99

Shakeel/

IN THE CENTRAL ADMINISTRATIVE
LUCKNOW BENCH, LUCKNOW BUNAL

O.A. NO. 1990.

Ganga Charan and others

Applicants

Versus

Union of India and others

Respondents.

I N D E X

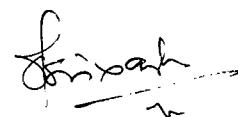
COMPILATION NO. I

SL.NO.	Description of papers	Page No.
1.	Application	1 - 12
2.	Annexure - 1 Order dated 9.8.1990 issued to the applicants separately.	13 - 00
3.	Power (Vakalatnama)	14 - 00

Lucknow Dated:
November 23, 1990.

21/11/1990

APPLICANT.



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

O.A. NO. OF 1990

26/11/90
2/11/90
2/11/90
2/11/90

1. Ganga Charan, son of Babu Lal, aged about 36 years, resident of Village Shahsabdpur, P.O. Rupauo, District Unnao.
2. Ram Kumar, son of Mahabir Prasad, aged about 33 years, resident of Village Hastinapur (Gayadeen Khera) P.O. Hasanganj, District Unnao.
3. Radhey Lal, son of Bhagwan Deen, aged about 31 years, resident of V. & P. District Lucknow.
4. Ram Kishore, son of Mahabir, aged about 31 years, resident of Village Hastinapur (Gayadeen Khera) P.O. Hasanganj, Lucknow.
5. Ram Lakhman Tewari, son of Sri Moti Lal Tewari, aged about 31 years, resident of Village Behta, P.O. Dewera Kalan, District Unnao.

.... Applicants

VERSUS

1. Union of India, through its General Manager, Northern Rly., Baroda House, New Delhi.
2. ~~Additional~~ Railway Manager, Northern Railway, Hazratganj, Lucknow.
3. Station Superintendent, Northern Railway, Lucknow.
4. Assistant Personnel Officer, Northern Railway, Hazratganj, Lucknow.

.... Respondents.

DETAILS OF APPLICATION.

1. Particulars of the order against which the application is made:

The instant application is being filed challenging the validity of the action of the Respondents in

ST HAGHAI2

(S/)

not regularising, absorbing and posting the applications as regular Porters. The Respondents have arbitrarily and discriminatorily deprived the applicants from being posted as regular Porters. The applicants are also challenging the validity of the order dated 9.8.1990 declining to give any benefit to the applicants working as substitute Porters. A true copy of one of such aforesaid order dated 9.8.1990 issued to the applicants in their names separately is being filed herewith as Annexure-1 to this application.

ANNEXURE-1

2. Jurisdiction of the Tribunal:

The applicants declares that the subject matter of the order against which he wants redressal is within the jurisdiction of the Tribunal.

3. Limitation:

The applicants further declare that the application is within the limitation period prescribed in Section 21 of the Administrative Tribunals Act, 1985.

4. Facts of the case :

4.1 That the applicants while functioning as substitute Porters were screened for regular absorption but were neither empanelled as regular porters malafidely and arbitrarily while various juniors to the the applicants having lesser number of working days and lesser ability and suitability have been empanelled and absorbed arbitrarily.

4.2 That so far ^{as the} facts of the case are concerned the applicants were initially appointed as Substitute Porters against short term vacancies sometimes between 1975 to 1977. The dates of their initial appointments are being mentioned as under:-

Name	Dt. of initial Apptt.
1. Ganga Charan	14.4.1976
2. Ram Kumar	20.4.1975
3. Radhey Lal	20.9.1977
4. Ram Kishore	14.4.1977
5. Ram Lakhman Tewari	25.12.1977

4.3 That since their initial appointment the applicants are continuing as such without interruption which has been created artificially in the garb of

filed today
S/No
26/II

RAHMAN

administrative need with the sole purpose to deprive the applicants from due benefits. Any way the applicants are lastly continuing without any interruption from the year 1983-84 and have thus already completed more than one year of continuous service within the meaning of Section 25-B of the Industrial Disputes Act 1947 (hereinafter referred to as 1947 Act).

- 4.4 That the work and conduct of the applicants have always been found excellent. They have always devoted and dedicated to the work entrusted to them and have never been warned or punished in any manner whatsoever.
- 4.5 That the applicants have also completed more than 120 days of continuous service and are enjoying the pay scale and all other benefits available to a regular Porter of the Northern Railway, Lucknow. The applicants have always been treated as regular Porter of Northern Railway, Lucknow and have always been given all the facilities and privileges admissible to a railway servant. Practically the applicants are the railway servants as defined in Paragraph 102(13) of Indian Railway Establishment Code Vol. I and as such the applicants' conditions of service are governed by the Rules and regulation applicable to a holder of that post.
- 4.6 That while the applicants were functioning to the entire satisfaction of their superiors they shocked when on 25.7.1988 they were stopped by the Respondent No. 3 from working as Porters without intimating any reason. The applicants have neither been given any notice nor one month's pay in lieu thereof.
- 4.7 That being aggrieved of the illegal and callous action of the Respondent No. 4 in not allowing the applicants to work as usual, the applicants filed an Original Application No. 105/88(L) in the Hon'ble Administrative Tribunal, Lucknow Bench, Lucknow inter alia praying that the Respondents be directed to allow the applicants to work as usual and pay them salary and further pass appropriate orders absorbing the applicants as regular Porter.

ITM 212

in as much as they have already completed more than three years of continuous service as substitute Porters.

4.8 That thereafter the Respondents prepared and filed counter reply narrating the facts that the applicants were not engaged as Substitute Porters but were simply engaged as casual labours and as such according to the provisions of law applicable to the casual labours the case of the applicants will be considered for regular absorption. It was also contended by the Respondents that the applicants ought to keep stringent vigil on work so that they must ^{come} give and demand for the work on ~~if~~ its availability otherwise the Respondents will give the work to the available casual Porters without having any consideration for the seniority.

4.9 That as the aforesaid act of the Respondents was absolutely against the labour laws besides the provisions of Railway Establishment Code and Manual and was ~~promoting~~ ^{permitting} the policy of hire and fire tantamounting to unfair labour practice, the applicants strongly opposed it in their Rejoinder reply and also filed several documents indicating that they were never engaged as casual labours and were indeed engaged as Substitute Porters against the continuing vacancies on regular scale of pay and all other benefits attached with the post available to the holder of post like Pass privilege etc.

4.10 That although the Rejoinder reply was already filed yet some how or the ~~or~~ other the Hon'ble Tribunal gathered from record on 3rd March, 1989 that the Rejoinder reply was not filed and consequently the applicants' application was disposed of by the Hon'ble Central Administrative Tribunal on the next date i.e. on 17.4.1990. merely on the basis of the averments placed on behalf of the Respondents. An application for recalling the order reserving the judgment on the application dated 17.4.90 was moved immediately by the applicants on 19.4.90 but the judgment reserved was pronounced on 23rd April 1990 without any orders on the aforesaid application dated 19.4.1990 which is pending for orders. The

राम कुमार

RC/1/1

applicants thereafter moved an application for review of the ~~same~~ aforesaid judgment dated 23.4.90 on 16.5.90 which is also pending. A true copy of the aforesaid judgment dated 23.4.90 is being filed herewith as Annexure-2 to this application.

ANNEXURE-2

4.11 That a perusal of the aforesaid judgment contained in Annexure-1 to this application will reveal that the Hon'ble Tribunal was pleased to direct the respondents to consider the case of the applicants for the relief they are entitled to within a period of two months, as a sequel to which a letter dated 6th July 1990 was issued to the applicants under the signatures of Respondents-4 intimating that their cases were being examined by the competent authority in compliance of the directions of the judgment dated 23.4.1990. All the applicants were communicated the same letter with the change of name and the addresses of the applicants. A true copy of one of such ~~it~~ letters dated 6.7.1990 is being filed herewith as Annexure-3 to this application.

ANNEXURE-3

4.12 That thereafter vide letter dated 9th August 1990 the applicants were informed that all the cases were examined by the competent authority in compliance of the directions of the Hon'ble tribunal and it was found that the applicants were not entitled to continue to work as Substitute Porters. All the applicants were informed by the letter containing similar matters with the change of their names and addresses. One of such letters dated 9.8.1990 passed by the competent authority has already been filed as Annexure-1 to this application.

4.13 That thereafter the applicants were served with a letter dated 17.8.1990. By dint of this letter the applicants who were designated as Substitute Porters, were informed that their cases will be screened by the Screening Committee for the purposes of absorption, posting and appointment on regular basis on Group 'D' posts. All the applicants were issued similar cyclostyled letters containing similar facts containing their names and addresses separately. All the applicants were designated as Substitute Porters. A true copy of one of such letters dated 17.8.1990

रामकृष्ण

ANNEXURE-4

is being filed herewith as annexure-4 to this application.

4.14 That thereafter the applicants presented themselves before the Screening Committee along with all requisite papers. The applicants were asked nothing by the Screening Committee except their names and their father's name. Some of the applicants were also asked to lift a sand bag on their head which they successfully did.

4.15 That as the applicants were fully eligible and seniors serving under the Respondents for the last several years, they were ⁿsanguine enough about their being empanelled and absorbed against regular posts, but they shocked to know that neither the applicants were empanelled nor given posting against the regular posts of group 'D' while various junior persons and the new persons who never worked in the Railways were given regular appointment and posting against the regular Group 'D' posts. The names of some of such persons are Sarvasri Munna Lai, son of Ram Saran, Ram Chandra son of Ram Bali, Ram Shanker son of Ram Das, Prem Bahadur son of Jwala Prasad, Chandra Bali son of Shyam Sunder, Shiv Narain son of Din Raj Prasad, Babu Ram son of Shree Krishan Yadav, Rajaram son of Chedi Lai, Chhittar Pal son of Ram Dayal, Sohan Lal Tewari, son of Shree Krishan Tewari, Shiya Ram son of Shree Krishan, Shree-e Ram Singh son of Barsati, O.P. Yadav son of B.L.Yadav, Ram Khilawan son of Data Ram, Shiv Ram son of Raghunath Prasad, Ram Niwas son of Ram Gopal Tewari etc

4.16 That the Respondents have not issued the result of the aforesaid screening nor any list of successful candidates has been declared but they have directly issued appointment, posting letters to the persons arbitrarily. As a sequel to it no body could know about his fate in the screening. The applicants came to know of this fact when they found that juniors to them have been called for postings and appointments.

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4.17 That the applicants are substitute porters and as such they have been paid salary in regular scale scale of pay as they were engaged to work against a substantive vacancies which were lying vacant due to non availability of the regular employees. The applicants were also given all the benefits of a Railway servant holding the post of Porter like privilege pass, P.T.Os etc. As the applicants have already completed more than three years of continuous service they acquired the status of quasi permanent ^{railway servt} and they also acquired the status of a temporary railway servant on completion of 120 days of continuous service.

4.18 That it is worthwhile to mention that para 2315 to 2319 of Railway Establishment Manual (old edition), was published by the Government of India, Ministry of Railways, contemplats the conditions of service of substitute porter. The substitutes are different from the casual labours. For the sake of ready reference a photo-state copy of para 2315 to 2321 of the aforesaid Railway Establishment Manual and the para showing distinction between substitutes and casual labours given in ~~Cap~~ Chapter XXXVI of the Railway Establishment Manual (latest edution), by J and are being filed herewith as Annexures-5 and 6 to this Application.

ANNEXURES-5
AND 6.

4.19 That the applicants have been screened to complete the legal formalities without actually screening them. If the applicants are properly screened, the applicants who are serving as substitute porter for the last several years continuously will definitely be found suitable to be absorbed and appointed against the regular Class IV posts.

4.20 That the process of screening does not involve the element of comparison or comparative merit. The call letters are issued on the basis of seniority and once it is found that the past records of the employees is satisfactory, he is normally selected to be empanelled and absorbed. The senior employees are given the benefits of appointment and posting in preference to the juniors.

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4.21 That there was no question put to the applicants which they failed to reply. The question which they faced before the screening committee was to answer their names. They were thereafter asked to lift a sand bag which they successfully lifted in one attempt. Nothing further was asked or enquired from them, but the applicants were neither declared selected nor empanelled nor any letter of regular appointment was issued to them. On the ~~by~~ other hand the applicants have already been restrained from functioning as substitute porters against the posts on which they were functioning from past without any rhyme or reason albeit the said posts were available and no claimant had come to substitute the applicants.

4.22 That the Respondents have completely eschewed the process of fair screening and they have simply adopted pick and choose policy to choose the candidates of their own choice who succeeded to persuade them by making link in one way or the other. The applicants being peniless and poor persons failed to adopt such tactics and consequently nothing could come to rescue them.

4.23 That screening is made in order to judge the suitability of working of a substitute for absorption in regular service. It is ~~not~~ incumbent upon the Respondents to empanel the employees found suitable in the screening for the purposes of regular absorption as per the provisions contained at page 773 of Railway Establishment Manual (latest edition) by M.L.J and. In the instant case the Respondents have prepared no such panel before issuing the letters of appointment and posting.

4.24 That while working as Substitute Porters under the Respondent No.4, the applicants were restrained from functioning on the ~~post~~ basis of some telephonic message according to which it was instructed not to allow the casual labours to work further without written permission of senior divisional Operating Superintendent Northern Railway, Lucknow. Although these instructions had nothing to do with the applicants yet the applicants were restrained from

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functioning which was indeed their termination from service. As the applicants were neither given one month's notice indicating the reason for their termination of service nor the provisions of Section 25-F of Industrial Dispute Act 1947 was followed, the restrained order against the applicants rendered null and void in the eye of law and thus the applicants are still in service in the eye of law and are entitled to work and to get salary. The applicants had already completed more than one year of continuous service on 18.6.1988 when the such message was passed on to restrain the applicants from functioning. A true copy of the aforesaid message as recorded in the ~~office diary~~ copy of the Assistant Station Master on duty is being filed herewith as Annexure-7 to this application.

ANNEXURE-7

4.25 That the Respondents are filling the post of regular Group 'D' employees clandestinely and if all the posts are filled in, the applicants will not be able to ~~rep~~ ^a benefit of this application. It is therefore expedient in the interest of justice that this Hon'ble Tribunal may kindly be pleased to direct the Respondents to keep 5 posts of regular group 'D' employees in reserve during the pendency of the case and further allow the petitioner to work as usual and pay them salary regularly.

5. Grounds for relief with legal provisions:

- i) Because the applicants were appointed as Substitute Porters and have completed more than 3 years of continuous service.
- ii) Because the applicants were illegally restrained from functioning which amounts to termination of their services without following the provisions of law.
- iii) Because neither any notice under the provisions of Para 149 of Railway Establishment Code Vol. I was given nor the provisions of Section 25-F of the Industrial Disputes Act was followed before terminating the services of the applicants.
- iv) Because the applicants were not properly judged for being absorbed as Group 'D' employees. The applicant successfully replied the question and lifted the sand bag before the Screening Committee.

21/8/88

- v) Because neither any seniority list was published before calling the incumbents for the purpose of screening nor any panel was formed and declared by the screening committee of the successful candidates for the purpose of appointment and posting.
- vi) Because all the applicants are having immaculate record of service and are fully fit to be absorbed as Group 'D' employees.
- vii) Because the applicants have been substitute porters are entitled to continue against the posts till the regular holder of post arrives to substitute them and as such their discontinuance was illegal and arbitrary.
- viii) Because the Screening Committee did not follow the fair procedure of testing the suitability of the candidates. The screening does not contain the element of comparative merit.
- ix) Because the action of the Respondent in not empanelling the applicants and issuing posting orders against Group 'D' post and in not allowing them to work as usual have deprived them of the right of life and livelihood besides foxz violating the provisions of part III of the Constitution of India and the various provisions of Railway Establishment Code and Manual.

6. Details of the remedies exhausted:

The applicants declare that they have availed of all the remedies available to them under the relevant service rules etc.

7. Matters not previously filed or pending with any other court:

The applicants further declare that they had not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made, before any court or any other authority or any other Bench of the Tribunal nor any such application, writ petition or any suit is pending before any of them.

8. Reliefs sought: In view of the facts mentioned in para 4 above the applicants pray for the following reliefs:-

- a) That this Hon'ble Tribunal may kindly be pleased to direct the respondents to empanel the applicants and issue orders of appointment and posting against the regular Group 'D' Posts.

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b) That this Hon'ble Tribunal may kindly be pleased to direct the Respondents to treat the applicants in continuous service right from the month of June, 1988 with all consequential benefits and pay the entire arrears of salary within such reasonable time as this Hon'ble Tribunal may deem fit. This Hon'ble Tribunal be further pleased to quash the order dated 9.8.1990 contained in Annexure-1 to this application and direct the respondents to give the applicants all the benefits of a substitute porter on the basis of their continuance in service.

xx XXXXXXXX~~XXXXXX~~XXXXXX~~XXXXXX~~XXXXXX

c) This Hon'ble Court/Tribunal may kindly be pleased to pass any other orders which are found just and proper in the ~~ex~~ circumstances of the case.

d) to award the cost of this application.

The Grounds for reliefs are the same as have been given in para⁵ above.
Interim Order, if any prayed for :

Pending final decision of the application the applicants seek the following interim reliefs:

That this Hon'ble Tribunal may kindly be pleased to direct the Respondents to keep five posts of Group D employees in reserve during pendency of the case which may be filled in subject to the final decision of this Hon'ble Tribunal and further this Hon'ble Tribunal may kindly be pleased to provide that the appointments so made shall be subject to the decision of the case.

This Hon'ble Tribunal may also be pleased to direct the Respondents to take work from the applicants and pay them salary regularly during the pendency of the case and also pass such other Order which are found just and proper ~~in the~~ ~~interest of the case~~ and for the sake of ends of justice.

10. That the instant application is being filed personally.

RMG/RK

11. Particulars of Postal Order filed in respect of the application fee.

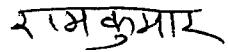
PO 2 415920 dt 29/11/90 Amt Rs 5/-

12. List of enclosures : As per Index I and II.

VERIFICATION

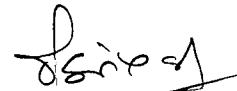
I, Ram Kumar, son of Mahabir Prasad, aged about 33 years, resident of Village Hastinapur (Gayadeen Khera) P.O. Hasaganj, District Unnao, the applicant No.2 and Pairokar on behalf of rest of the Applicants, do hereby verify that that the contents of paras 1 to 4 & 6 to 12 are true to my personal knowledge and paras 5 — are believed to be true on legal advice and that I have not suppressed any material fact.

Dated : Nov. . 1990



Place : Lucknow.

APPLICANT.


Advocate.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

13

O.A. NO. OF 1990.

Ganga Charan and others

Applicants

Versus

Union of India and others

Respondents.

ANNEXURE - I

NORTHERN RAILWAY

No. SS/LKO/R.L.Tiwari & Others/90.

Station Supdt's office
Lucknow Dt. 8/1990

Shri R.L. Tiwari,
S/o Sh. Moti Lal Tiwari
Vill. Behta,
P.O. Dewara Kalan,
Ditt. Unnao.

Registration No. 105/1988
Central Adm. Tribunal
LUCKNOW

R. L. Tiwari and Others

VERSES

Union of India

..

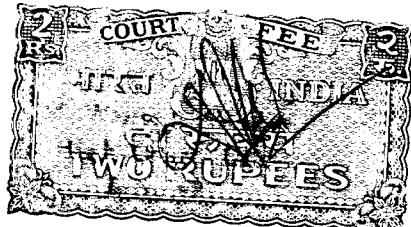
In the instant Case,
the Competent authority has examined the case
in compliance of directions of the Hon Tribunal/
Lucknow and it is found that there is no artificial
break in the working days of the applicants and
as such no benefit can be extended to the applicants
with regard to allow them to continue to work as
Substitute Porters.

You are therefore informed accordingly.

C/- The Law Superintendent,
Northern Railway, DRM Office Lucknow for information
in reference to your letter dated 17.5.90 & 6.6.90.

Station Supdt.
N.Rly. Lucknow.

AMDG



The Central Administrative Tribunal, Lucknow

वादी । अपीलान्त

वकालतनामा

वकालतनामा

C.A.No. - 19902

२५४

शाढ़ी (अपीलान्ट)

Ganga Charan ^{father's} बनाम
Union of India Sons
१० तुकदमा सन्

Applicants

प्रतिवादी (रेस्पोन्सिट)

... Respondents

6 82

झपर लिखे पुकारसा में श्रीमी और से श्री ३०० पी० श्रीवास्तव एडवोकेट
 (अधिकारी० पी० श्रीवास्तव, एडवोकेट
 द६७, पुराना महानगर निकट फातिमा अस्पताल, लखनऊ-२२६००२ महोदय

— अम अदाह
— शुद्धदा न०—
— शुद्ध लट्टू—
— इतास—

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) लिख देता हूं इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जबाब देही व प्रश्नोत्तर करें या कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिग्री जारी करावे और रुपया दसूल करें या मुलहनामा व इकबाल दावा तथा अपील निगरानी हमारी ओर से हमारी या अपने हस्ताक्षर से दाखिल करें और तख्तीक करें मुकद्दमा उठावें या कोई रुपया जमा करें या हमारी विषयी (फरीकसानी) का दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद से लेवे या पंच नियुक्त करें—वकील महोदय द्वारा की गई वह सब शार्यवाही हमको सर्वथा स्वीकार है और होगा मैं यह भी स्वीकार करता हूं कि मैं हर पेशी पर स्वयं या किसी अपने पैरोकार को भेजता रहूंगा अगर मुकद्दमा अदम पैरदी में एक तरफा भेरे दिलाफ फैसला हो जाता है उसकी जिम्मेदारी भेरे वकील पर भी होगी इसलिए यह वकारहनामा लिख दिया प्रमाण रहे और समय पर काम आवे ।

हस्ताक्षर (राजा लाला) (तिला)

साक्षी (वडाह) प्रभास राज

साक्षी (गवाह) १०/१२/२०

हिन्दूक (१८८१-१८८२)

महीना १२ सन् १९ ६८

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

M. P. NO. 767/9014
MISC. AN. NO. OF 1990

In re:

O.A. AN. NO. OF 1990

1. Ganga Charan, son of Babu Lal, aged about 30 years, resident of Village Shahsadpur, P.O. Rupauo, District Unnao.
2. Ram Kumar, son of Mahabir Prasad, aged about 33 years, resident of Village Hastinapur (Gayadeen Khera) P.O. Hasanganj, District Unnao.
3. Radhey Lal, son of Bhagwan Deen, aged about 31 years, resident of V. & P. District Lucknow.
4. Ram Kishore, son of Mahabir, aged about 31 years, resident of Village Hastinapur (Gayadeen Khera) P.O. Hasanganj, Lucknow.
5. RamLakhan Tewari, son of Sri Moti Lal Tewari, aged about 31 years, resident of Village Sehta, P.O. Dewera Kalan, District Unnao. Applicants

Versus

1. Union of India, through its General Manager, Northern Rly., Baroda House, New Delhi. *Filed today*
26/11
2. Additional Railway Manager, Northern Railway, Hazratganj, Lucknow.
3. Station Superintendent, Northern Railway, Lucknow.
4. Assistant Personal Officer, Northern Railway, Hazratganj, Lucknow. Respondent

APPLICATION FOR PERMISSION TO FILE
JOINT APPLICATION.

The humble applicants named above most respectfully submit as under:-

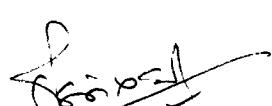
1. That the applicants are similarly situated and are aggrieved against one and the same impugned action of the Respondents.
2. That the applicants have filed the above noted application against one and the same cause of ^{arising} action arrived out of the common facts and circumstances and they have common interest in the matter.
3. That the applicants have prayed for common relief and have got jural relationship and as such they may be allowed to file a single joint application.

P R A Y E R

WHEREFORE it is most respectfully prayed that this Hon'ble Tribunal may kindly be pleased to ~~direct~~ permit the applicants to file a single application on behalf of ^{all} the applicants for the sake of ends of justice.

For in this act of kindness the applicants shall be highly obliged.

Lucknow Dated:
November 23, 1990.


(O.P. SRIVASTAVA)
ADVOCATE
COUNSEL FOR THE APPLICANTS.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH,

LUCKNOW

M.P.NO. 1039 OF 1992

OA 386/90(1)

Recd from - 17/11/92

GANGA CHARAN & OTHERS

...

APPLICANTS

VERSUS

UNION OF INDIA & OTHERS

...

RESPONDENTS

—
Sir,

APPLICATION FOR ORDERS

On behalf of the applicants, it is most respectfully submitted:-

1. That the above-noted case was admitted on 28.11.1990 and notices were issued to the respondents.

2. That after admitting the application, the Hon'ble Tribunal was pleased to order that the case be listed before learned D.R.(S) for completion of the proceeding of counter reply and rejoinder reply.

3. That firstly on 9.1.1991 the case was listed before the learned D.R.(J) and since then the case has been listed before learned D.R.(J) for more than twelve times.

4. That despite of ample of opportunity, no counter reply has been filed on behalf of the respondents.

5. That the applicants are poor substitute terminated porters.

6. That it appears that the respondents do not want to file any counter reply.

WHEREFORE, it is most respectfully prayed that this Hon'ble Tribunal may kindly be pleased to order that the case be listed before the Hon'ble Bench of Tribunal for orders for the sake of ends of justice.

For this act of kindness, applicants shall be obliged.

LUCKNOW

DATED 17.11.1992.

(D.P.SHEVASTAVA)
Advocate,
COUNSEL FOR THE APPLICANTS

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

O.A. NO. 386 of 1990 (2)

Gsnga Charan and other Applicants

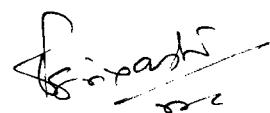
Versus

Union of India and others Respondents.

I N D E X

COMPIRATION NO. II

Sl. No.	Description of papers	Page No.
1.	Annexure - 2 Judgment dated 23.4.1990 of the Hon'ble Tribunal.	1 - 6
2.	Annexure - 3 Copy of letter dated 6.7.1990	7 - 00
4.	Annexure - 4 Letter dated 17.8.90 designating the applicants as Substitute Porters.	8 - 10
5.	Annexure - 5 Para 2315 to 2321 of Railway Estt. Manual.	11 - 13
6.	Annexure - 6 Para showing the distinction between the Casual Labours and Substitutes.	14 - 16
7.	Annexure - 7 Letter Dt 18/6/1988	17 - 00


ADVOCATE.

1125412

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

O.A. NO. OF 1990.

Ganga Charan and others Applicants

Versus

Union of India and others Respondents.

Applicant

ANNEXURE-2

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

CIRCUIT BENCH, LUCKNOW

Original Application 105/88(L)

Ram Lakhman Tewari & others .. Applicants

Versus

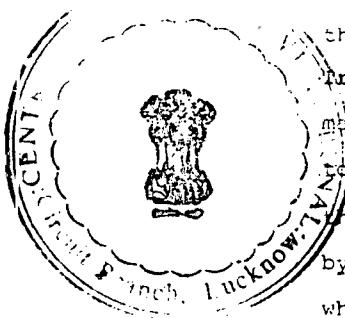
Union of India & others .. Respondents

Hon. Mr. D.K. Agrawal, Judl. Member.
Hon. Mr. P.S. Habeeb Mohammed, Adm. Member.

(Hon. P.S. Habeeb Mohammed, Adm. Member.)

RAM LAKHMAN TEWARI AND 5 OTHERS, WHO WERE WORKING AS SUBSTITUTE PORTERS UNDER THE CONTROL OF STATION SUPERINTENDENT, NORTHERN RAILWAY, LUCKNOW, ^{late} filed this application under section 19 of the Administrative Tribunals Act, 1985 with the prayer that the Tribunal may issue directions to the respondents to allow them to continue to work as Substitute Porters and restrain the respondents from giving effect to the orders given by the Station Superintendent, Lucknow from 25.7.88 by which they were not allowed to continue to work as Substitute Porters. There is also a prayer for a regularization of their services and to treat them as being in continuous service without any break and to allow the consequential benefits of this post.

2. Their case is that they were initially appointed from various periods as Substitute Porters: first appointment from 25.12.77, second appointment from 14.4.76, fourth appointment from 20.4.76, fifth appointment from 2.9.77 and sixth from 14.4.1977, the details being as



ATC
[Signature]

21st August

given by the applicants in respect of application No. 3. They are continuously working from the years 1983-84 and had completed more than one year of continuous service within the meaning of section 25 of the Industrial Disputes Act and their work has been found satisfactory, therefore, the restraining order by the respondents No. 3 unit which they were not allowed to work, is against law. They also appealed for the screening test for regularization of their services in May 1987. The respondents have resorted to pick and choose policy while allowing ~~laborers~~ ^{persons engaged later} to continue to work as Substitute Porters. Since they have completed 120 days continuous work as per the provisions of Railway Establishment Manual, Industrial Disputes Act is also applicable to them in that they have completed more than one year of continuous service, the applicants have prayed for the reliefs in the application indicated earlier.

3. Reply on behalf of respondents is that their services could not be utilised because no casual vacancies were occurring and whenever such casual vacancies were occurring, they were not vigilant enough to offer themselves for duty. It is stated that the applicants are not Substitute Porters, but casual laborers and are under the control of Station Superintendent, Fort in Lucknow, Lucknow. According to the reply, it is incorrect to say that they were restrained from doing work by the Station Superintendent from 25.7.83. There was nothing to show that they were initially appointed as Substitute Porters. It is true that they worked in casual capacity and there have been no artificial breaks created by the administration. The details of the working of the applicant have been given by the respondent in Annexures to the reply. None of the applicants had completed 120 days of continuous service.

After

SD

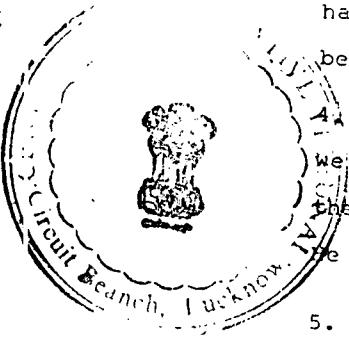
(3) 2/19

-3-

The details are that in case of the first applicant he had worked for 47 days in the year 1984, 177 days in 1985, 42 days in 1986, 126 days in 1987 and 43 days in 1988. In case of applicant No. 2, he had worked for 100 days in 1985 and for 63 days in the year 1987. In case of applicant No. 3 he had worked for 55 days in the year 1984, for 163 days in 1985, 134 days in 1986, 100 days in 1987 and 47 days in 1988. Applicant No. 4 had worked for 168 days in the year 1986, 180 days in 1987 and 127 days in 1988. Applicant No. 5 had worked for 18 days in 1984, 61 days in 1985, 32 days in 1986, 133 days in 1987 and 34 days in the year 1988. In case of applicant No. 6 he had worked for 140 days in the year 1986, for 98 days in 1987 and for 55 days in 1988. Since they had not completed 120 days of ^{continuous} working, they will not be entitled to any temporary status or other regularisation.

4. In the absence of learned counsel for the applicant we had to peruse the records and go by the merits of the case. We heard the learned counsel for the respondents. He argued his case on the lines indicated in the reply.

5. After hearing the applicants and perusing the records, we find that applicants were casual labourers and service conditions of casual labour are explained in Chapter XXV of the Railway Establishment Manual. There is nothing to indicate that any of the applicants had worked continuously for 120 days and this is the requirement for regularisation ~~for considering regularisation~~. The rules make it clear that casual labour should not be deliberately discharged with a view to causing artificial break in their service and preventing them from attaining temporary status. Rule 2504 makes it clear what constitutes



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21/10/1981

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the break in service and Rule 2504 in Chapter XXV states as follows: (Railway Establishment Manual (Second Edition) 1968)

"Breaks in Service: The following cases of absence will not be considered as breaks in service for the purpose of determining six months' continuous employment referred to in para 2501 viz:

(a) The periods of absence of a Workman who is under medical treatment in connection with injuries sustained on duty covered by provisions under the Workmen's Compensation Act.

(b) Authorised absence not exceeding 15 days during the preceding six months.

Note: Unauthorised absence or stoppage of work or the intervening period when the workmen on his own changes from one work to another will be treated as a break in continuity of employment.

(c) Non-performance of work on days of rest given under the Hours of Employment Regulations or under the Minimum Wages (Central) Rules, 1950 and on days on which the establishment employing the labour remains closed does not constitute a break nor will it be counted against the limit of fifteen days referred to in (b) above. The term "authorised absence" for this purpose covers permission granted by the supervisory official in charge to be away from work for the period specified."

Lucknow
Railway Establishment Manual (By M.L. Jand) a Bahri Brothers publication, second Edition 1986) has also a chapter on casual labour at page 764 to 775. This also makes it clear that temporary status will be given to casual labour on 120 days of continuous working:

(a)

"Temporary status. Casual labour who has worked for a continuous period of 120 days will be granted temporary status. Such status will also be granted to the C.L. working on Projects on completion of 180 days of continuous service. The service may be either in the same work or the same type of work. In no case they should be dismissed deliberately to cause an artificial break in their service. They shall also be entitled to 20 days authorised break which will not be counted while determining continuous service.

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STATION HILL

(b) The following will not be considered as break in their service:

- (i) Absence due to medical treatment for injuries sustained on duty.
- (ii) Authorised absence with the permission of the supervisor, upto 20 days;
- (iii) Non performance of work in days of rest;
- (iv) Nonperformance of work when the establishment remains closed (2504 (E))
- (v) 3 days unauthorised absence on personal reasons of the worker may not be computed in 20 days authorised absence and to constitute a break (2504 E) (E(NG) ii/79/CL/26 dt. 26.7.79)
- (vi) When sent for medical examination, the absence may be reckoned to a ds 20 days authorised absence If the worker has attained temporary status, this period may also be adjusted against his leave due. (E (NG) ii-79/CL/43 dt. 8.11.79 & 24.11.79)
- (vii) Absence upto 4 weeks (in addition to 20 days) may be permitted to female employees for maternity purposes (E(NG) i-77/CL dt. 30.4.77, N. 6770)
- (viii) If the duration of work authoritatively expires on 31st March and the work is continued later on, it will not cause a break in service, if the work is given to the same casual labour.
(E-72/CL/69/3(i) dt. 2.7.73)
- (ix) On completion of work or for non availability of further productive work when S.L. on daily wage's or in regular scale of Pay of 1/30 of the employed for when work is available, such gaps in the service will not count as breaks for the purpose of continuous service of 120/180 days. This is applicable e.f. 21.10.80.
(E(NG) ii/80/CL/25 dt. 21.10.80/N. 7677, N. 169(Sc)

In case of Substitutes the gaps that occur between 2 engagements should be ignored for the purpose of grant of temporary status.

(E(NG) ii-62/SD/8 dt. 1.1.83)

It is clear that though the applicants have been engaged in casual vacancies, they cannot be considered substitute which is a special meaning to the word of regular service. In third definition, substitutes are persons in the regular scale of pay in civil posts, not in the civil

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the railway servants being on leave or due to non-availability of the permanent railway servants.

6. While, therefore, it is not possible for us to come to the conclusion that any of the Applicants has worked for 120 days continuously to enable them to be considered for the conformant of temporary status or other benefits, we are clear in our mind that the Applicants had worked for long periods. Whether the breaks as indicated in Annexures to the reply are authorised breaks or not authorised breaks in terms of railway rules, will be a matter for the Respondents to consider. In the circumstances, while we are unable to give the reliefs prayer for to the Applicants, we would direct the Respondents to sympathetically consider the cases of the Applicants, the periods for which they have worked, vide details as disclosed in the Annexures to the reply by the Respondents and arrive at a conclusion as to what benefits can be given to the Applicants. This should be done within a period of two months from the date of receipt of a copy of this order.

7. The Original Application is disposed of accordingly. There will be no order as to costs.

MEMBER (A)

23.4.90
MEMBER (J)

Dated: 23 April 1990

C T. C.

Entered
True Copy

Mr. Justice
S. Venkateswaran
Central Administrative Tribunal
Lucknow Bench,
Lucknow
25/4/90

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21/4/90/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

O.A. NO. OF 1990.

(7)

Ganga Charan and others

Applicants

Versus

Union of India and others

Respondents.

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ANNEXURE-3

NORTHERN RAILWAY

No. SS/LKO/RL Tiwari &
others/90

Station Supdt.'s office
N.Rly, Charbagh, Lucknow.

Dated 6/7/1990

Sh. R.L. Tiwari,
S/o Sh. Moti Lal Tiwari
Vill.- Behta,
Post-Office- Dewara Kalan
Distt- Unnao.

Registration No. 105/1988
Central Adm. Tribunal
Lucknow.

R.L. Tiwari and others

Verses

Union of India

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In compliance of directions of the honourable
Tribunal made in its judgement dated 23.4.90, the case
is being examined by the competent authority, considering
actual position of your working period and decision taken
in matter will be communicated to you very shortly.

This is for your information.

Copy to:

Station Supdt.
Lucknow.

Law Supdt. (Legal Cell) DRM Office, Lucknow for information
in reference to his letter dated 6.6.90.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

(8)

O.A. NO. OF 1990.

Ganga Charan and others

Applicants

Versus

Union of India and others

Respondents.

ANNEXURE-4

1262

उत्तर रेलवे

पंज. सं 220/5-9/स्थीनि/90

मण्डल नायार्लिय
लखनऊ, दिनांक 15-8-90

नाम :—द्वारा द्वारा

पिता का नाम :—द्वारा द्वारा

पत्र :—द्वारा द्वारा

द्वारा स्टेशन मास्टर/स्टेशन अधीक्षी, लखनऊ

विषय :— यातायात एवं वाणिज्य शाखा के ग्रुप 1डी। कर्मचारियों
के स्थीनिंग हेतु बुलावा पत्र।

मापको सूचित किया जाता है कि आप दिनांक 15-8-90 से ०२-९-90
तक मण्डल नायार्लिय में निम्नलिखित प्रपत्रों के साथ स्थीनिंग कमेटी के समक्ष ब्रॉडस्ट्रीट
स्टेशन में स्थीनिंग हेतु ठीक 10 बजे उपस्थित हो।

1. शक्ति योग्यता प्रमाण-पत्र, मूल प्रति एवम् फोटो प्रति
2. ज. तिथि प्रमाण-पत्र
3. यदि अनु.जाति/अनु.जन.जाति के हो तो तहसीलदार या सज.डी.,
सम.द्वारा जारी जाति प्रमाण-पत्र की मूल प्रति एवम् फोटो
प्रतिलिपि साथ जवाय लायें।
4. दो चरित्र प्रमाण-पत्र जो कि ३: माह के अन्दर भिन्न-भिन्न
सम.स्ल.०२०/सम.०१० या राजपत्रित अधिकारी द्वारा जारी किया
गया हो।
5. केजुबल लेवर कार्ड की फोटो प्रति एवम् मूल प्रति
6. पांच सत्यापित पात पोर्ट साईंज का फोटो ग्राफ

नोट :— स्टेशन अधीक्षक/लखनऊ के अधीन कार्यरत सभी बुलाये गये एवजी कर्मचारियों
को शूचित किया जाता है कि वे अपने साथ उपरोक्त प्रपत्र के ज़िक्रियत
से शुकार के उपलब्ध प्रपत्र साथ लायें जिससे कि उनके प्रथम नियुक्ति तिथि
एवम् कार्य दिवस की पुष्टी करने में वैध एवम् सहज हो।

संहायक कार्मिक अधिकारी
३०८० / लखनऊ

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उत्तर रेलवे

पर्सनल नं २२०६५-२/रिक्ति/१०

मण्डल कार्यालय
लखनऊ, दिनांक १०-८-१०

नाम: राम कुमार
पिता का नाम: राम कुमार
पद: स्टेशन मास्टर/स्टेशन अधीक्षक

द्वारा स्टेशन मास्टर/स्टेशन अधीक्षक

विषय: - यातायात एवं वार्षिक शाखा के शृणु ठीकी कर्मचारियों
के लिखीनिंग हेतु बुलावा पत्र।

आपको सूचित किया जाता है कि आप दिनांक ७५/८/१० से १२-९/१०
तक मण्डल कार्यालय में निम्नलिखित प्रपत्रों के साथ लिखीनिंग कमेटी के समक्ष कमेटी
रूप में लिखीनिंग हेतु ठीक १० बजे उपस्थित हो।

- १- शिक्षक योग्यता प्रमाण-पत्र, मूल प्रति सवाल फोटो प्रति
- २- जन्मतिथि प्रमाण-पत्र
- ३- यदि अनु.जाति/अनु.जन.जाति के हो तो तहसीलदार या एस.डी.,
एम. द्वारा जारी जाति प्रमाण-पत्र की मूल प्रति सवाल फोटो
प्रति लिपि साथ अवश्य लायें।
- ४- दो चारों वर्ष प्रमाण-पत्र जो कि ४: माह के अन्दर भिन्न-भिन्न
सम०स्त०१०/सम०पी० या राजपत्रित अधिकारी द्वारा जारी किया
गया हो।
- ५- लेजुवल लेदर कार्ड की फोटो प्रति सवाल मूल प्रति
- ६- पाँच उत्त्यापित पास पोर्ट सार्फ का फोटो ग्राफ

नोट:- स्टेशन अधीक्षक/लखनऊ के अधीन कार्यरत सभी बुलाये गये सवाल कर्मचारियों
को सूचित किया जाता है कि वे अपने साथ उपरोक्त प्रपत्र के अतिरिक्त
सभी एकार के उपलब्ध प्रपत्र साथ लायें जिससे कि उनके प्रथम नियुक्ति तिथि
सवाल कार्य दिवस की पूष्टी करने में वैध सवाल तद्दम हो।

सहायक कार्मिक अधिकारी
उ०र०० / लखनऊ

राम कुमार

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उत्तर रेलवे

फैक्टरी 220/5-9/टिक्कीना/90

मुंडल राज्य

लखनऊ, दिनांक 17-8-90

गान्धी जी का नाम:

पद:

द्वारा स्टेशन माल्टर/स्टेशन अधी. 1K

विषय:- यातायात स्वं दार्शनिक शाखा के ग्रुप डी। कृष्णार्थों के टिक्कीनिंग हेतु बुलावा पत्र।

आपको सूचित किया जाता है कि आप दिनांक 05-8-90 के 02-02-90 तक न्यूडल रायलिय में निम्नलिखित प्रपत्रों के साथ टिक्कीनिंग कमेटी के तहत कमेटी समूह के टिक्कीनिंग हेतु ठीक 10 बजे उपस्थित हो।

- 1- शक्ति दोष्यता प्रमाण-पत्र, मूल प्रति स्वस्त्र फोटो प्रति
- 2- जन्मतिथि प्रमाण-पत्र
- 3- यदि अनु.जाति/अनु.जन.जाति के हो तो तहसीलदार या राज्य, एम.द्वारा जारी जाति प्रमाण-पत्र की मूल प्रति स्वस्त्र फोटो प्रतिलिपि साथ जवाय लायें।
- 4- दो घरित्र प्रमाण-पत्र जो कि छ: माह के अन्दर भिन्न-भिन्न समूहों/समूहों या राजपत्रित अधिकारी द्वारा जारी किया गया हो।
- 5- कैप्चल लेवर कार्ड की फोटो प्रति स्वस्त्र मूल प्रति पाँच सत्यापित पास पोर्ट तार्ज का फोटो ग्राफ़

गोदावरी:- हेतु ग्रामीण/लखनऊ के अधीन कार्यरत सभी बुलाये गये स्वजी कर्मघातियों दो सूचित किया जाता है कि वे अपने साथ उपरोक्त प्रपत्र के अंतरिक्त सभी प्रकार के उपलब्ध प्रपत्र साथ लायें जिससे कि उनके प्रथम नियुक्ति तिथि स्वस्त्र कार्य दिवस की पुष्टी करने में वैध स्वस्त्र संख्या हो।

रामलक्ष्मा

17/8/90

सहायक कार्मिक अधिकारी
उमेदो / लखनऊ

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O.A. NO. OF 1990.

Ganga Charan and others Applicants

Versus

Union of India and others Respondents.

AN NB&CR - 5

2312. **Allotment of residences and recovery of rent.**—Subject to the availability of accommodation, a temporary railway servant is eligible for allotment of the same and to pay rent therefor in the same way as a permanent railway servant would.

2313. **Passes.**—A temporary railway servant is entitled to the same scale of passes as are admissible to a permanent railway servant of the corresponding status.

2314. **Advances.**—Subject to the conditions laid down in Chapter XVI a temporary railway servant may be granted advances for the purposes mentioned in that Chapter.

(ii) **Substitutes**

2315. **Definition.**—“Substitutes” are persons engaged in Indian Railway Establishments on regular scales of pay and allowances applicable to posts against which they are employed. These posts may fall vacant on account of a railway servant being on leave or due to non-availability of permanent or temporary railway servants and which cannot be kept vacant.

2316. **Circumstances under which substitutes can be recruited.**—

(i) Ordinarily there should be no occasion to engage “substitutes” having regard to the fact that practically in all categories of railway servants leave reserve has been provided for. However, when owing to an abnormally high rate of absentees the leave reserve may become inadequate or ineffective as in the case of heavy sickness, or where the leave reserve is available but it is not possible to provide the same, say at a wayside station, and it may become absolutely necessary to engage substitutes even in vacancies of short duration.

(ii) As far as possible Substitutes should be drawn from a panel of suitable candidates selected from Class III and IV posts and should be engaged subject to the observations made in (i) above, only in the following circumstances :—

(a) Against regular vacancies of unskilled and other categories of class IV staff requiring replacement for

which arrangements cannot be made within the existing leave reserve.

- (b) Against a chain vacancy in the lower category of class IV staff arising out of the incumbent in a higher class IV category being on leave, where it is not possible to fill the post from within the existing leave reserve.
- (c) Against posts in categories for which no leave reserve has been provided.
- (d) Against vacancies in other circumstances specified by the Railway Board from time to time.

2317. Emoluments payable to the Substitutes: — Substitutes should be paid regular scales of pay and allowances admissible to such posts, irrespective of the nature or duration of the vacancy.

2318. Rights and privileges admissible to the Substitutes: — Substitutes should be afforded all the rights and privileges as may be admissible to temporary railway servants, from time to time on completion of six months continuous service. Substitute school teachers may, however, be afforded temporary status after they have put in continuous service of three months and their services should be treated as continuous for all purposes except seniority on their eventual absorption against regular posts after selection.

NOTE:—The conferment of temporary status on the Substitutes on completion of six months continuous service will not entitle them to automatic absorption/appointment to railway service unless they are in turn for such appointment on the basis of their position in select lists and/or they are selected in the approved manner for appointment to regular railway posts.

2319. Breaks in service: — The following cases of absence will not be considered as breaks in service for the purpose of determining six months' continuous employment referred to in para 2318 above:—

- (a) The periods of absence of a Substitute who is under medical treatment in connection with injuries sustained on duty covered by the provisions under the Workmens' Compensation Act.

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- (b) Authorised absence not exceeding 15 days during the preceding six months.

NOTE.— Unauthorised absence or stoppage of work will be treated as a break in continuity of employment.

- (c) Days of rest given under the Hours of Employment Regulations or under the Statutory Enactments and the days on which the Establishment employing the substitutes remains closed will not be counted against the limit of 15 days authorised absence referred to above. The term "authorised absence" for this purpose covers permission granted by the Supervisory official in charge to be away from the work for the period specified.
- (d) Periods involved in journey etc., for joining the post on transfer from one station to another station or within the same station itself, in the exigencies of service but not exceeding in any case normal period of joining time permissible under the rules.
- (e) A register should be maintained for recording the names of all "Substitutes" wherever employed according to the unit of recruitment e. g. Division, Workshops, P.W.I.s. lengths etc. strictly in the order of their taking up Substitute employment at the time of their initial engagement.

SECTION B

TEMPORARY ASSISTANT OFFICERS

2320. **Definition:**—A temporary assistant officer means an officer who is neither class I nor class II, recruited through the Union Public Service Commission (other than retired/released defence service officers and officers who were already in railway service at the time of their appointment as temporary gazetted officers).

2321. **Termination of service and period of notice:**—Service of a temporary assistant officer shall be liable to termination on 3 months' notice on either side during the period of temporary employment. The Government shall, however, also have the right to pay 3 months' pay in lieu of three months notice.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

O.A. NO. OF 1990.

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Applicants

(14)

Union of India and others

Respondents.

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Casual Labour and Substitutes

Sometimes these two types of labour are misunderstood and one is taken for the other in their service rights. We place below in a chart form, different aspects as applicable to each.

Substitutes

Definition. They are persons engaged in regular scales of pay and allowances applicable to posts against which they are employed. These posts may fall vacant due to rly. servants being on leave or due to non availability of permanent or temporary rly. servants and which cannot be kept vacant.

(2315 EM)

Class. They may be in class III or class IV

Payment. They being on regular scale, are paid on monthly basis. They draw pay against the regular sanction irrespective of the duration of vacancy.

(2315 EM)

Vacancy. Vacancy position must be checked before they can be appointed. If there is no vacancy, no substitute can be engaged.

Increment etc. They shall be entitled to yearly increment and shall subscribe to P.F.

Leave Reserve. Where leave Reserve is available no substitute should be engaged unless the absence exceeds the number of 'L'Rs or the L.R. is not readily available, vacancy being at a way side station.

2316 (i) EM)

Casual labour

It refers to labour whose employment is seasonal, intermittent, sporadic or extends over short periods. Labour of this kind is normally recruited from the nearest source. It is not liable to transfer and the conditions applicable to permanent and temporary staff do not apply to them.

(2501 EM)

They are normally in class IV.

They are paid on daily basis. They draw wages from contingencies till they get temporary status or are employed on Projects.

No cadre position check may be necessary in this as they are engaged against sporadic requirements.

They will not get any increment etc. till they get temporary status.

No such restriction in this.

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CASUAL LABOUR AND SUBSTITUTES

Panel. As far as possible they should be drawn from a Panel of suitable candidates selected for Class III & IV posts (2316 (ii) EM) Persons not on approved panels may not be engaged for more than 3 months.

(E(NG) ii 69/RE/1/90 dt. 16-3-70)

Temporary Status. They should be given Temporary Status after working for 4 months, except for School Teachers who will be given temporary status after 3 months. (2318 EM) Gap between two engagements may be ignored for the purpose of giving temporary status,

(E(NG) 11-82/SB-8-dt. 6-1-83)

M.W. Act. They are not governed by Minimum Wages Act.

Rly servants. They are rly. servants for all purposes.

Duration. They should normally not be engaged for more than 3 months at a stretch.

Literacy. Normally literacy is one of the qualification for their engagement.

Service Card. No Service Card is given to them.

Notice of discharge. No such notice is required except as given under code rules. However Retrenchment Compensation under I.D. Act will be paid.

Register. A register showing the names of all substitutes employed unit wise as per the order of taking up their substitute employment must be maintained. (2319, EM)

Medical exam. They will be entitled to relaxed standard of Medical examination on empanelment to the regular service. (E(NG) ii/71 CL/84 dt. 1-8-73)

Recruiting Authority. They will be appointed only by the Competent authority. Normally Senior Subordinates recruit them.

There may not be any panel, but those discharged earlier must be given preference as per their seniority while re-engaging.

They will also be given Temporary status after working for 4 months. Authorised absence and discontinuance of work for want of productive work will not constitute a break.

Those of them engaged on the Scheduled Trades are governed by M.W. Act.

They are rly. servants under the Railways Act and not for Code Rules. So not entitled to Passes/P.T.O. They should not be discharged merely with a view to cause an artificial break in their service. Except in categories where literacy is a prescribed qualification, no literacy should be insisted upon.

They must be given a Service Card.

Notice of 15 days, is required to discharge CPC holders. Also they will be entitled to benefits under I.D. Act.

Similar register must be maintained in their case too.

This is applicable to casual labour too.

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Pensionary benefits. Service as substitute rendered after completion of 4 months and followed by regular absorption will be counted for Pension.
 (F(E) iii 69/PN I/21 dt. 22-7-70)
 ER 193/80

Medical Treatment. They are entitled to Medical Treatment for self only in the out patient department.
 (E(NG) ii-77/CL-2 dt. 16-5-79)

Daily Allowance. They will be entitled to it as per Rules.

Break Down Duties. Substitutes allotted to B.D. gangs will be paid BDA and other benefits as admissible.

Other Provisions. Casual Labour (C.L. in short) may be employed in the following cases—
 (i) *Staff paid from contingencies.* Such of the persons who continue to do the same work for which they were engaged, on other work of the same type for more than 4 months without a break will be treated as temporary after the expiry of such period.

(ii) Labour on Projects, except those transferred from the temporary or permanent employments.

(iii) Seasonal labour who are sanctioned for specific works of less than 4 months duration.

Note—Once a person attains a temporary status, he retains that status so long he is in continuous employment on the railways.

The term same type of work should not be too rigidly interpreted so as to cause undue suffering to C.L. by way of break in service because of a slight change in the type of work in the same unit. (2501 EM)

(iv) Following record must be maintained for daily rated & Temporary C.L.s. :—

(a) Retirement Register (b) Left Hand Thumb Register (c) Service cards.

Unit of recruitment.—(i) Senior Subordinates like I.O.W., PWI, Station etc. will be the unit of recruitment of C.L., So also for purpose of discharge Master the Seniority in the respective unit of IOW/PWI/SOM etc. will be followed :

(ii) In Projects the Recruitment unit will be jurisdiction Engineer, so for discharge also the seniority list of Executive Engineer will be followed.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
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A.N.R.B.-7

True copy of day 5th H. P. Duley - Am
Bapt 18.6.88

Spt' (9) All casual labourers working at the station, are not permitted to perform duty further wise on his code of S.R.C.S.R.K.C. T.I.F.D has given this message personally today hence, Casual labourers are not required to work without the written permission / the message of S.R.C.S.R.K.C or T.I.F.D - noted have written to be managed by leverance Porter & gateman on duty, account of

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G. S. M. / P. G. M. D.
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मुमुक्षु भाषा
पाठ्यक्रम

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH, LUCKNOW

O.A. No. 386 OF 1990 (L)

Sri Ganga Charan and others Applicants
Versus
Union of India and others Respondents

COUNTER REPLY ON BEHALF OF RESPONDENTS

¶. I, K.M. Narain presently posted as
Asstt Personnel Officer in the Office of
the Divisional Railway Manager, Northern Railway,
Lucknow, hereby solemnly state as under:-

1. That the undersigned is presently posted as Asstt Personnel Officer in the Office of the Divisional Railway Manager, Northern Railway, Lucknow and is duly authorised and competent to file this reply on behalf of the respondents. The undersigned has read and understood the contents of the above mentioned application moved by the applicant under Section 19 of the Administrative Tribunal Act, 1985 (hereinafter referred as 'application') and is well conversant with the facts stated hereunder.
2. That the contents of paragraph 1, 2 and 3 of the application need no comments from the answering respondents.
3. That the contents of paragraph 4.1 of the application are denied. In reply thereto, it is most respectfully submitted that all the applicants were initially engaged as 'Casual Labours' against day to day casualities, and after having completed requisite number of days' continuous working, they were

EMC
12 July 1993

screened by a duly constituted Screening Committee on 7.09.1990, and the Screening Committee did not find them suitable. Accordingly, they did not qualify in the screening, and were not placed on the panel of successful candidates. Thus, the allegations made in the paragraph under reply, being false and baseless, are denied.

4. That the contents of paragraph 4.2, as stated, are not admitted. It is most respectfully submitted that the applicants, who were 'Casual Labours', whose services were utilized against day to day casualities of the permanent and temporary railway staff working as 'Porters'. It is further clarified that to meet out the casualities, the Railway Administration has appointed 'Leave Reserve Porters', who are railway servants. These 'Leave Reserve Porters', being railway servants, are utilized against the casualities of Porters. In case, the casualities exceed to that of the total of Leave Reserve Porters, only then the services of 'Casual Labours' are utilized in order of their seniority to avoid any dislocation of work. It is further submitted that the applicant Sri Ram Kishore was initially engaged on 14.07.1977, instead of 14.04.1977. The averments made by the applicants to the effect that they were 'appointed' by the Railway Administration, are specifically denied. Instead, the applicants were 'engaged' by the Railway Administration as 'Casual Labours'.

5. That the contents of paragraph 4.3 of the application, being false and baseless, are denied. It is specifically denied that the applicants have worked continuously with the alleged 'artificial breaks' with the sole purpose of depriving them of their due. In fact, the applicants have worked in broken periods against 'day to day casualities'.

6. That the contents of paragraph 4.4, as stated, are denied. In reply thereto, it is most respectfully submitted that the Casual Labour/Substitutes are not

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12/4/92*

railway servants as defined under Rule 43 of the Railway Establishment Code, Volume-I, which reads as under:-

"Railway servant means a person who is a member of a service, or holds a post under the administrative control of the Railway Board. It also includes a person who is holding the post of Chairman, Financial Commissioner, or a member of the Railway Board. Persons lent from a service or post which is not under the administrative control of the Railway Board to a service or post which is under such administrative control, do not come within the scope of their definition. The term **excludes** Casual Labour."

In view of the above quoted Rule 43, the applicants have no legal right to claim appointment or absorption in railway service as a railway servant unless and until they have been found suitable by a Screening Committee.

7. That the contents of paragraph 4.5 of the application, being wrong and baseless, are denied in entirety. It is specifically denied that the applicants have 'practically' or otherwise acquired the status of railway servants, and/or have acquired the status of a temporary railway servant at any point of time. This fact is evident from the judgment and order of this Hon'ble Tribunal dated 23.04.1990 passed in O.A.No.105/88(L): Ram Lakhan Tewari and others versus Union of India and others. As such, the principle of 'res-judicata' will apply in the present case.

8. That in reply to the contents of paragraph 4.6 of the application it is most respectfully submitted that the applicants were not provided any work as there was no work available for them, though their names and seniority as Casual Labours remained intact for the purposes of their regularisation subject to their suitability which was to be adjudged during the course of Screening by a duly constituted Screening Committee. It is further submitted that the

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applicants were called for screening, and they appeared before the Screening Committee. The Screening Committee declared the panel of successful candidates, which was notified by the letter No.220-E /5-9/Rectt/Screening/C1-IV(T&C)90 dated 6.11.1990. The applicants, who did not succeed in the screening test, were not placed on the panel, while the successful candidates' names were brought on the panel.

9. That the contents of paragraphs 4.7 to 4.11 of the application, being matter of record, need no comments. However, it is most respectfully submitted that this Hon'ble Tribunal, after considering all the material on the record of O.A.No.105/88(L), and after considering each and every aspect, decided the said application vide its judgment dated 23.04.1990. In compliance of the said judgment and orders of this Hon'ble Tribunal, the respondents have sympathetically considered the case of the applicants which is evident from the Annexure No.3 to the present application. In compliance of the judgment and orders of this Hon'ble Tribunal dated 23.04.1990, the applicants were called for the screening test, as evident from Annexure No.4 to this application, but the applicants were declared unsuccessful in the screening test by the Screening Committee. Thus, the respondents have fully complied by the orders of this Hon'ble Tribunal dated 23.04.1990 passed in O.A. No.105/88(L): Sri Ram Lakhan Tewari and others versus Union of India and others. Therefore, on the same facts and grounds the present application is not maintainable, being barred by the principles of 'res judicata', and is liable to be dismissed on this very ground.

10. That in reply to the contents of paragraphs 4.12 to 4.14 of the application, it is most respectfully submitted that as a matter of fact, the rules contained in the Chapter XXV of the Indian Railway Establishment Manual relate to the Casual Labour/Substitute Porter. It is the admitted case of

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the applicants that as provided under the railway rules given in Chapter XXV of the Indian Railway Establishment Manual, they were called for screening test for regularisation, and they did appear in the said screening. The allegations of the applicants to the effect that the Screening Committee asked nothing but the names and their parentage, is far from truth, and therefore, specifically denied. The applicants were screened in accordance with the rules and regulations on the subject alongwith other eligible candidates, and were unsuccessful in the screening test. Therefore, their names were not brought on the panel of successful candidates. Anything contrary to what has been said in this paragraph is denied.

11. That the contents of paragraph 4.15 of the application are denied. It is most respectfully submitted that the Screening Committee, screened the applicants alongwith other similarly situated eligible persons, and declared them unsuccessful. Therefore, the respondents have no right vested in them to override the decision of the Screening Committee. It is further submitted that except Sri Munna Lal s/o Sri Ram Saran, Sarva Sri Raja Ram s/o Chedi Lal, Siya Ram s/o Sri Kishan, Ram Singh s/o Barsati, Gopi Yadav s/o B.L.Yadav, Shiv Ram s/o Raghunath have been successful in the screening test, and accordingly, they have been posted against existing vacancies in the Division.

12. That the contents of paragraphs 4.16 to 4.18 of the application, as stated, are denied. It is most respectfully submitted that the applicants were screened in accordance with rules by a duly constituted Screening Committee, and the panel of successful candidates was declared on 6.11.1990. Hence, the contents of aforesaid paragraphs, being wrong and baseless, are denied. It is further submitted that as a matter of fact, Casual Labour/ Substitutes have been engaged against the casualities of permanent and temporary railway staff, but this

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does not give them any legal right to become a railway servant **without facing** Screening Committee as provided under the railway rules. It is respectfully submitted that the issues raised by the applicants in the present application have already been considered and decided by this Hon'ble Tribunal in O.A.No.105/88 (L): Sri Ram Lakhan Tewari and others versus Union of India and others, vide judgment and order dated 23.04.1990. This judgment is binding on both the parties and can not be legally reagitated afresh before the same forum.

It is further submitted that the 'Substitutes' are defined in Rule 2315 of the Indian Railway Establishment Manual, but the process of their regularisation is the same as that of 'Casual Labour' which has been given in Chapter XXV of the IREM, which means that both the 'Substitutes' and 'Casual Labours' have to face Screening Committee and have to qualify in the screening test for their regularisation and absorption in railway services. The citation of the Railway Establishment Manual by Jand in paragraph 4.18 is not authentic.

13. That the contents of paragraphs 4.19 to 4.21 of the application, being wrong and baseless, are denied. In reply thereto, the facts stated in the foregoing paragraph are reiterated.

14. That the contents of paragraphs 4.22 to 4.24 of the application, being totally false, incoreect and basless, are specifically and strongly denied. It is specifically denied that any, or all of the respondents have 'eschewed the process of fair screening' and have shown favour to any of the candidates having any 'link' (whatever the term means). It is further denied that since the applicants, being peniless or poor, and failed to adopt any such 'tactics', were left out. It is further submitted that the Railway Establishment Manual by M.L.Jand is not authentic, and can not take place of the acual rules on the subject. It is denied

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that no panel was drawn by the respondents before issuing letters of appointment and posting. Likewise, the contents of paragraph 4.24 of the application, being totally false and baseless, are denied. It is most respectfully submitted as the applicants have failed in the screening test conducted by a duly constituted Screening Committee, the question of giving one month's notice, or salary in lieu thereof, or the applicability of Section 25-F of the Industrial Disputes Act, 1947 does not arise.

15. That the contents of paragraph 4.25 of the application are denied. It is specifically denied that the answering respondents are 'clandestinely' filling up the post of regular Group 'D' employees. It is further submitted that the respondents have fully complied with the judgment and orders of this Hon'ble Tribunal dated 23.04.1990 passed in O.A.No.105/88(L): Sri Ram Lakhan Tewari and others versus Union of India and others. There is no justification for keeping posts reserved for the applicants, as they have failed in the screening test.

16. That in view of the submissions made in the foregoing paragraphs of this reply, the undersigned is advised to state that none of the grounds mentioned in paragraph 5 of the application is tenable in the eye of law.

17. That the contents of paragraph 6 of the application need no comment.

18. That the contents of paragraph 7 of the application, as stated, are denied. It is most respectfully submitted that the applicants had earlier filed O.A.No.105/88(L): Sri Ram Lakhan Tewari and others versus Union of India and others before this Hon'ble Tribunal, and the same has been decided on 23.04.1990.

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19. That in view of the submissions already made in this reply, the undersigned is advised to state that the applicants are not entitled for any of the reliefs/interim relief as sought by them in paragraphs 8 and 9 of the application.

20. That the contents of paragraphs 10, 11 and 12 of the application need no comment.

Lucknow, Dated:
April 12, 1993.

VERIFICATION

I, K. M. Narain presently posted as
Ass't Personnel Officer in the Office of
the Divisional Railway Manager, Northern Railway,
Lucknow, hereby verify that the contents of paragraph
1 of this reply are true to my personal knowledge and
those of paragraphs 2 to 15, 17 and 18 are based on
record and the same are believed to be true. The
contents of paragraphs 16 and 19 are based on legal
advice and the same are believed to be true. That no
part of this reply is false and nothing material has
been concealed.

Lucknow, Dated:
April 12, 1993.

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In the Hon'ble Central Administrative Tribunal,
Lucknow Bench, Lucknow

WY
O.A. No. 386 of 1990 (L)

Ganga Charan & others ----- Applicants

Versus

Union of India & others ----- Respondents

Rejoinder Reply to the Counter

Reply of the Respondents

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1. That contents of para 1 of the counter reply need no comments except that the name and designation of the officer filing counter reply on behalf of the Respondents has not been disclosed in the copy of the counter reply supplied to the applicants.
2. That contents of para 2 of the counter reply need no comments.
3. That contents of para 3 of the counter reply are denied, reiterating the contents of para 4.1 of the Original Application. It is further submitted that the applicants were initially appointed as Substitute Porters and they are fully eligible and suitable to be absorbed as regular

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porters but they have been excluded malicessly from the panel arbitrarily for the purpose to make regular appointment. It is submitted that petitioners were never engaged to meet day; today casualties as alleged. The applicants have been engaged against the regular nature of work after being found fully eligible and suitable to shoulder the responsibilities of the post which they are performing with full devotion and dedication to the entire satisfaction of their superiors. The Respondants have adopted pick and choose policy while making postings on regular basis.

4. That contents of para 4 of the counter reply are denied and reiterating the contents of para 4.2 of the original application. The answering opposite parties/Respondants have not supported the contents of para under reply which are too fair from truth.

5. That contents of para 5 of the counter reply are denied and in reply thereto the contents of para 4.3 of the original application are reiterated. The Respondants have been practicing to create artificial breaks of depriving the applicants and others to claim the benefit of absorption and posting against the regular post. As a matter of fact the applicants have completed their services much more to the required service continuously without any break except the interruptions which have been artificially created by the Respondants. But the applicants can not be

deprived of the benefits of appointment on the regular basis on the premises of these interruptions.

6. That contents of para 6 of the counter reply are denied, reiterating the contents of para 4.4. of the original application. The applicants are Railway servants who have been appointed against the regular post as substitute porters and have been given/paid full salary in the pay scale attached to the post along-with the all admissible allowances from time to time and other conditions of service like medical facilities pass facility and P.TOs. Thus, applicants held the post under the administrative control of the Railway Board as well as their local satraps. It is denied that applicants have not been found suitable by the so called Screening Committee for the purpose of absorption in the Railway service. The applicants have wrongly been excluded and not empanelled without any rhyme and reason. The Respondents have only empanelled of their own men of the candidates in whom they were interested but the candidates like the applicants who have no approaches and/or also too poor to please anyone have been left to be empanelled.

7. That contents of para 7 of the counter reply are denied, reiterating the contents of para 4.5 of the original application. The applicants have acquired the status of temporary Railway servants after completing the 120 days continuous service and they are being governed like Railway servants defined in para 102(13) of Indian Railway Establishment Code volume (I). In original application no. 105 of 1988 (L) no decision has been given on this point and only an ex parte orders

P.T.O. (M)

have been passed on the basis of some averments which does not constitute resjudicata.

8. That contents of para 8 of the counter reply are denied and in reply thereto the contents of para 4.6 ~~are~~ of the original application are reiterated. Though the work is available in abundance yet the Respondants adopted pick and choose policy, provides work to their sweet will without adhering to any fair principle or seniority. All the applicants were not duly considered by properly constituted Screening committee otherwise the persons/candidates who have empanelled on the recommendations of so called screening committee are virtually inferior in all respects of the applicants. There is absolutely no merit in empanelling some candidates leaving others. The applicants are well versed with the functioning and requirements of the post and who are fully eligible and qualified ~~than~~ have been left to be empanelled in the garb of decision of the screening committee, which is only arbitrary and illegal.

9. That contents of para 9 of the counter reply need no comments to the extent that they are in consonance with the contents of para 4.7 of the original application. Contrary averments are emphatically denied. It is further submitted that the applicants have never been duly considered for the purpose of absorption. There is absolutely no reason for leaving the applicants from being empanelled. The candidates who have been

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empanelled are not keeping better records than the applicants in any manner whatsoever and in fact they are inferior in all respects to the applicants. The Respondants may be directed to produce the records of the screening committee indicating reasons for not empanelling the applicants.

10. That contents of para 10 of the counter reply are denied ~~and~~ to the extent as they are contrary to the contents of para 4.12, 4.14 of the original application which are reiterated. It is further reiterated that all the applicants have not been properly considered and have been wrongly and maliciously left to be empanelled for being posted on regular basis. There is absolutely no valid reason for not absorbing the applicants while the candidates having inferior service records as lessor experience of service lessor qualification in comparison to the applicants have been empanelled.

11. That contents of para 11 of the counter reply are emphatically denied and reiterated contents of para 4.15 of the original application. The criteria of empanelment is seniority list and as such the Respondants can not ignore the seniority unless and until there is something grave in the matter no candidate falling in the order of seniority can be left to be empanelled. The petitioners have been wrongly been left to be empanelled while juniors to them have been included in the panel prepared by the Respondants.

12. That contents of para 12 of the counter reply are denied and in reply thereto the contents of para 4.16 ~~of the~~ to para 4.18 of the original application are reiterated. It has been fairly considered in para under reply that substitutes have been engaged while permanent or temporary staff accrued and as such the legal rights ~~accrued~~ in favour of the applicants by virtue of the long continuation. The Respondants have not disclosed the basis or the criteria which has been adopted while preparing the panel for the purpose of making posting on regular post. The applicants crave leave to state that no criteria was in fact adopted or formulated by the screening committee or any other committee for the purpose of empanelling the candidates. The averments of the Respondants to the effect that the applicants were not found suitable to be included in the panel is not founded on any material and is mere rigmorole.

13. That it is further submitted that applicants have not been fairly considered, otherwise the candidates/applicants who are having a vast experience of the work could not have been left to be included in the panel and there is absolutely no reason for not posting the applicants on the regular post.

14. That contents of para 13 of the counter reply are denied, reiterating the contents of para 4.19 to ~~4.21~~ 4.21 of the original application.

15. That contents of para 14 of the counter reply are denied and in reply thereto the contents of para 4.22 to 4.24 of the original application are reiterated. It will be pleasure of this Hon'ble Tribunal to direct the respondents to produce the records, pertaining to screening committee, ascertaining to the truth and to lift ban. The applicants have never faced in any screening committee as alleged, rather they have not been included in the panel allegedly prepared by the so called the screening committee.

16. That contents of para 15 of the counter reply are denied, reiterating the contents of para 4.25 of the original application. It is further submitted that the Respondants have shown the pretence of the complying with the orders of this Hon'ble Tribunal without actually considering the applicants in a fair manner. There is no criteria on which the applicants could be left to be included/empanelled and the Respondants have not included the applicants merely in colorouable exercise of powers conducive to arbitrariness. It may be pleasure of this Hon'ble Tribunal to direct the Respondants to produce the records of the screening committee indicating the reasons for not including the applicants in the list/said panel vis-a-vis others who have been empanelled.

17. That contents of para 16 of the counter affidavit are denied and in reply thereto the contents of para 5 of the original application are reiterate. The grounds urged by the applicants are sole tenable in the eyes of law and the original application deserves to be allowed

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with cost to the applicants. The Respondents may further be directed to keep arrangements for posting the applicants on regular basis to secure the ends of justice.

18. That contents of para 17 of the counter reply need no comments.

19. That in reply to the contents of para 18 of the counter reply it is submitted that in original application no. 105 of 1988 (L.) it was directed to the Respondents to consider the cases of the applicants fairly but the same has not been done and in most unfair and arbitrary powers have been exercised to the detriment of the interest of the applicants.

20. That contents of para 19 of the counter reply are denied, reiterating the contents of para 8 and 9 of the original application. The relief sought by the applicants are well founded and the original application deserves to be allowed with cost.

21. That contents of para 20 of the counter reply need no comments.

प्रतिक्रिया

Lucknow:

Applicants.

Dated: August , 1994.

contd....9.

Verification

I, Radhey Lal aged 35 years,
son of Shri Bhagwan Deen.
resident of village & post Moundia, Lucknow.
who is himself the applicant no.1 and parokar on
behalf of the rest of the applicants, do hereby
verify that the contents of paras 1 to 21 of the
Rejoinder Affidavit are true to my personal knowledge
and belief and I have nothing suppressed in the
affidavit any material fact.

Lucknow:

राधेल
Applicant.

Dated: August 17, 1994.

— Nov —

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

Regd. A/D
23-A, Thornhill Road
Allahabad. 211 001

Registration O.A. No. 386 of 19^o O(L)

No. CAT/Alld/Jud 2010/1990

Applicant(s)

UNION OF INDIA

Versus

Respondent(s)

UNION OF INDIA & OTHERS

1. UNION OF INDIA THROUGH ITS GENERAL MANAGER H.R.D. BARODA, NEW DELHI.
2. DIVISIONAL ACCOUNT MANAGER H.R.D. MASTANAJI LUCKNOW.
3. CHIEF SUPERINTENDENT H.R.D., LUCKNOW.
4. H.R.D. PERSONNEL OFFICES H.R.D. MASTANAJI LUCKNOW.

Please take notice that the applicant above named has presented an Application a copy of whereof is enclosed herewith which has been registered in this Tribunal and the Tribunal has fixed 09 Day of 01.12.1991 For. FINAL HEARING.

If, no appearance is made on your behalf, your pleader or my son one duly authorised to Act and plead on your behalf in the said application, it will be heard and decided in your absence.

Given under my hand and the seal of the Tribunal this 04. Day of 12.90 1990.

For Deputy Registrat
(Judicial)

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

C.A.NO. 386 OF 1990(L)

Ganga Charan Applicant
Versus
Union of India Respondents.

28.11.1990.

Hon'ble Mr. Justice K. Nath, V.C.
Hon'ble Mr. M.M. Singh, A.M.

Admit.

Issue notice to respondents to file a counter within four weeks to which the applicant may file a rejoinder within two weeks thereafter. List for final hearing on 09.01.1991.

Sd/-
A.M. Sd/-
V.C.

// True Copy //

Ms/

6/11/90
Central Administrative Tribunal
LUCKNOW

दालत श्रीनान " - Before the court of Justice
 वादो नुदालेह नुदालेह, नुदालेह

प्रतिवादो नुदालेह : ज दालतनामा
 ०. ए० ३८०९/१३७० वादो नुदालेह :
 Grace a claim प्रतिवादो नुदालेह :
 नुक्कमा तल १९ पेजी जी ता. ११५
 जार लेहे नुक्कमे मे अपनी जार है।

Sh. Sidelka, K. Verma सिद्धर्थ वर्मा नहोदय
 वकील

जे अपना वकील नियुक्त करके प्रतिज्ञा है इकरार है करता हूँ और लेहे देता हूँ हस नुक्कदने मे वकील नहोदय स्वयं अधिका अन्य वकील दावा जो उछ पैरवी व जवाब देहो व प्राप्त करेगा अन्य जोई गणज दालेह करे या लौटा दे या हमारी जोर से डिगरो जारी करावे और समया वसूल करे या सुलहनामा वगा इक्काल दावा तथा अपील व निगरानी हमारी जोर ते हमारे या अपने हस्ताक्षर से दालेह करे और तसदीक करे या नुगदना उठाने या जोई समया जमा करे या हमारी या पैवज फरोजानी है ज दालेह देया समया अपने या हमारे हस्ताक्षर युक्त हस्ताक्षरी है रसोद से लेवेदा पंच नियुक्त करे वकील नहोदय हुमारा को गई वड कार्यवाही हन्जो सर्वथा स्वोकार है और तोगो मे यह भी स्वोकार करता हूँ है वे हर पेगी स्वयं या तसी अपने पैरागर को भेजता है रहूँगा अगर नुक्कमा अदम पैरदो मे एक तरफा मेरे हस्ताक्षर पैसला हो जाता है उसको जिम्मेदारी भेरी वकील पर न होगी। इस तरह यह क्षमलतनामा लेहे देया कि प्रभाण रहे और समय पर जम जावे।

साक्षी गवाह है

दिनांक

नाम अदालत

नुक्कमा

नं।

हस्ताक्षर Sh. Siddharth Verma

Accepted
Sh. Siddharth Verma

SIDDHARTH VERMA
A. VOCATE
C-5, K-Road
Mahanagar Extension
Lucknow-226 006